IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1044 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KRISHNKANT SHIVLAL SUKHADIYA

Versus

DISTRICT COLLECTOR

Appearance:

MR AS SUPEHIA for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/06/2001

ORAL JUDGEMENT

#. The petitioner is a retired employee who was serving as Talati since 10.9.1986. Initially, the petitioner was appointed as the Talati on temporary basis and he worked

as such from 7.2.1957 to 1961. In the year 1961, he was relieved from service on the ground that he was over aged at the time of appointment. The petitioner had challenged the said order by way of filing an application before the Gujarat Civil Services Tribunal. The Tribunal, by its order dated 30.11.1985, directed the District Collector, Mahesana to reinstate the petitioner by way of fresh appointment and the petitioner agreed to the said condition, meaning thereby, he had given go-by to his past services rendered in the department. Subsequently, by order dated 9.9.1986 the petitioner was reinstated in service on the said post of Talati. Ultimately, by way of superannuation the petitioner retired from the said post on 31.3.1995. After his retirement, the petitioner requested the department to give him the benefit of pension. The representation was made to the authority in this behalf by the petitioner which is at Annexure-F to the petition. The Collector wrote a letter dated 7.2.1997 to the Secretary, Revenue Department recommending the case of the petitioner for pension on the ground that the petitioner had served between 7.2.1957 and 30.4.1961 and thereafter he was reappointed from 10.6.1986. If the services of the petitioner are to be considered from 10.6.1986, then he would not be entitled to pension since he has not completed the qualifying period of service for getting pension. However, the Collector recommended the case of the petitioner considering the fact that he has served from 7.2.1957 to 30.4.1961 and if the said services are taken into consideration for the purpose of pension, the petitioner can be said to have completed 12 years' service which is a pensionable service. However, the State Government, by its order dated 20.1.2000, came to the conclusion that as the petitioner has accepted his appointment as new recruitment, his earlier services cannot be considered for the purpose of pension. The petitioner therefore was informed that he is not entitled to pension and accordingly the prayer of the petitioner was rejected. The petitioner has challenged the aforesaid order by way of filing this petition.

#. Mr.Supehia, learned advocate for the petitioner argued that it is no doubt true that the petitioner has agreed to accept the appointment as new recruitment. However, so far as the pensionary benefits are concerned, there is no reason why the actual services put in the department by the petitioner between 1957 and 1961 should not be taken into account only for considering his pension case. He submitted that intervening period cannot be treated for any other purpose like seniority etc., and for the limited purpose i.e. for pensionary

benefit the said period is required to be taken into consideration and that even the Collector has also recommended the same. He further submitted that even otherwise, as per the Government Resolution dated 2.2.1996 such break in service can be condoned for the purpose of giving pensionary benefits in order to find out aggregate service period. He relied upon the provisions of Rule 192 of the BCSR wherein it is stated that the Government has power to condone a deficiency which may not ordinarily exceed one year regarding total services rendered by the Government servant for the purpose of giving benefit of pension. He submitted that even otherwise the petitioner has continuously served for 9 years after his reappointment, and therefore, one year period can be added in his service as per the aforesaid rule for the purpose of giving him the benefit of pension. He submitted that in any case if the earlier four years' services cannot be considered, at least one year period can be condoned by the Government under the aforesaid provisions of the BCSR.

#. I have heard Mr.Supehia, learned advocate for the petitioner and Mr.Bhatt, learned AGP for the respondents.

#. It is not in dispute that the petitioner had served for about four years between 1957 and 1961. It is no doubt true that on his assurance that he will give go-by to his past services, the petitioner was reinstated in service. However, because of the same the petitioner was not entitled to get the benefit of back wages or any other benefit for the intervening period and his services were treated as fresh services from 1986. However, considering the facts of the case, the Collector recommended the case of the petitioner for pension. Under the circumstances, the Government shall examine whether a period of one year can be condoned for the purpose of giving benefit of pension to the petitioner as per the provisions of Rule 192 of the BCSR on which Mr.Supehia has relied upon. The petitioner of course is not entitled to claim any benefit for the period from 1961 till he was actually reinstated in service. However, the Government may consider to include at least his earlier four years' services, so that the petitioner may not be a loser for the purpose of pension. Even the Collector has also recommended the case of the petitioner for the purpose of pension.

#. Under these circumstances, the matter is required to be sent back to the Government for reconsideration of the case. Looking to the facts and circumstances of the case, the case of the petitioner may be reconsidered for

the purpose of including four years' services rendered between 1957 and 1961 for the purpose of pension. If it is not possible to include the earlier four years' services rendered by the petitioner, the authority also may consider the question of condonation of break in service as per the provisions of Rule 192 of the BCSR so far as one year period is concerned. The authority may also consider regarding inclusion of one year period for the purpose of completing the qualifying period of service for getting pension. It is needless to say that the said decision will be taken by the authority in accordance with law and the Rules. However, considering the facts and circumstances of the case, the Authority may take a sympathetic view of the matter. The State Government may accordingly pass appropriate order considering the observations made hereinabove. The decision may be taken on or before 31st October, 2001.

#. In view of the above, the petition is required to be allowed and accordingly the same is allowed to the aforesaid extent. Rule is made absolute with no order as to costs. The writ to be sent forthwith.

(P.B.Majmudar,J)
(pathan)